

APPEAL NO. 022808
FILED DECEMBER 20, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 31, 2002, with the record closing on October 8, 2002. The hearing officer determined that the claimant's impairment rating (IR) was 12% as assessed by the designated doctor.

The claimant appeals, asserting that his IR should be 20% as assessed by the treating doctor pursuant to "Dorsal Lumbar Category IV" of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). The carrier responds, urging affirmance.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable lumbar and shoulder injury on _____, and that the claimant reached maximum medical improvement on March 10, 2002.

The treating doctor in a report dated February 20, 2002, assessed a 20% IR based on the DRE Lumbosacral Category IV (page 3/102 of the AMA Guides). No impairment was given for the shoulder. The designated doctor was appointed and in a report dated March 3, 2002, assessed a 12% IR based on 10% impairment for DRE Lumbosacral Category III and 2% impairment for the shoulder.

In a letter dated March 12, 2002, the treating doctor disagreed with the designated doctor's assessment arguing that an x-ray analysis placed the claimant in a Category IV. This letter was sent to the designated doctor who responded by letter dated April 5, 2002. The designated doctor explained why he had rated the claimant in Category III, however noting that while he had "extensive records" regarding the claimant he did not have the actual x-ray analysis and relied on another doctor's interpretation. The designated doctor stated that he "would be very happy to review any x-rays or studies" that show the claimed abnormalities. The hearing officer held the record open and in her Statement of the Evidence commented; "In order to ensure that all relevant films and documents were forwarded to [the designated doctor], this hearing officer wrote and requested that if such a film existed that it be forwarded so that it could be provided to [the designated doctor]." After the hearing officer made "Several attempts" without success, the record was closed.

The heart of the disagreement between the treating doctor and the designated doctor is whether there was x-ray evidence of loss of motion segment integrity which

would warrant a Category IV rating. See page 3/104, Table 70, page 3/108, and Table 72, page 3/110 of the AMA Guides. There being no such x-ray analysis available to the designated doctor (in spite of the hearing officer's efforts) we cannot say that the designated doctor's report is contrary to the great weight of the medical evidence. See Section 408.125(e).

After review of the record before us and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **NATIONAL AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**STEPHEN C. CARLIN
13155 NOEL ROAD
900 THREE GALLERIA TOWER
DALLAS, TEXAS 75240.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Veronica Lopez
Appeals Judge